

TO: Dealer Services Licensee  
FROM: Office of the Indiana Secretary of State, Dealer Services Division  
DATE: June 6, 2008  
RE: Senate Enrolled Act No. 307

The Indiana Secretary of State (“SOS”) assumed control of the dealer Services Division in 2007, and the Indiana General Assembly recently enacted Public Law 106-2008 (Senate Enrolled Act No. 307) (“SEA 307”), which makes several notable changes to the Indiana Code concerning the regulation of motor vehicle dealers.<sup>1</sup> These changes take effect on July 1, 2008, and may significantly affect businesses and individuals that participate in the motorized vehicle industry.

The following explanations summarize several of the provisions contained in SEA 307. However, this summary does not cover all provisions of SEA 307. You should consult private counsel with respect to how these changes may apply to your specific situation.

#### **I. OVERVIEW OF EXPANDED ENFORCEMENT AUTHORITY**

SEA 307 expands enforcement authority by allowing the SOS to investigate violations committed by Licensees of the Dealer Services Division, during which the SOS may do any of the following:

- Subpoena witnesses and compel testimony.
- Order the production of documents and records deemed material to an investigation.
- Administer oaths and affirmations, subjecting the affiant to the penalties for perjury.

Following an investigation, the SOS may pursue the following courses of action against a licensee and any person that assisted the licensee in committing or attempting to commit a violation:

- Deny, suspend, or revoke the dealer’s license without a hearing.
- Order a hearing and call witnesses.
- Impose a civil penalty up to five thousand dollars (\$5,000) per violation.
- Order injunctive relief.
- Order the appointment of a receiver.

*Note: the SOS may pursue the foregoing actions against a licensee and any person that assisted the licensee in committing, or attempting to commit, the violation*

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<sup>1</sup> An electronic copy of SEA 307 is available at <http://www.in.gov/legislative/bills/2008/SE/SE0307.1.html>

## **II. ADDITIONAL SUBSTANTIVE CHANGES**

### **CERTIFICATES OF TITLE IND. CODE 9-17**

IND. CODE § 9-17-3-3 (Non-Delivery of Title);

- **Prohibited Acts** - Ind. Code § 9-17-3-3 generally requires a dealer to issue a title to the purchaser at the time of the sale. Under certain circumstances, the dealer may have up to 21-days to deliver title; however, the burden is on the dealer to show the underlying transaction qualified for this limited exception.
- **Penalties** - Pursuant to Ind. Code § 9-17-3-3(c), the SOS may impose a civil penalty against a dealer that fails to deliver title in the amount of one hundred dollars (\$100) for the first violation, two hundred fifty dollars (\$250) for the second violation, and five hundred dollars (\$500) for all subsequent violations. Ind. Code § 9-17-3-7(c) also makes the failure to deliver title a Class B Misdemeanor.

IND. CODE § 9-17-2-12 (Obtaining Certificates of Title-Vehicle Inspections);

- A dealer that has been in business for more than 5 years and has sold more than 150 vehicles during the preceding year, is required to submit a vehicle inspection report with its application for a certificate of title.
- This section was amended to add the term “calendar” to the phrase “preceding calendar year.” This resolves the ambiguity on whether sales made during the current year are counted. Only sales made from January 1<sup>st</sup> to December 31<sup>st</sup> of the previous year are included in determining whether the dealer has sold the requisite amount of vehicles.

### **DEALER LICENSE PLATES IND. CODE 9-18**

IND. CODE § 9-18-26-1 (Dealer License Plates);

- This section was amended to clarify that a dealer is only entitled to receive two (2) metal license plates.

IND. CODE § 9-18-26-10 (Interim Plates);

- The Dealer Services Division has changed its former policy, which permitted dealers to pick up plates in person. Now, all dealer license plates are mailed to the dealer’s business address.
- This change in policy is reflected in 140 IAC 3.5-2-4(5)(B) (“Dealer licenses and dealer plates shall be mailed to the business address only.”).

SALVAGE VEHICLE DEALER LICENSES<sup>2</sup>  
IND. CODE 9-22

IND. CODE § 9-22-4-3 (License Application);

- This section requires the SOS to create an application form identifying the applicant's name, type of business entity, principal place of business, and proposed business activity.
- Depending on the type of business entity, additional information may be required such as the names and addresses of all persons with a controlling interest.

IND. CODE § 9-22-4-5 (Review and Approval of Applications);

- However, the SOS may deny a non-conforming application or an application that contains material misrepresentations.
- The SOS is also authorized to deny an applicant that has been found guilty of committing a fraudulent act in connection with the act of selling, storing, disposing, salvaging, rebuilding, or recycling vehicles or the parts from vehicles.

BOAT AND WATER CRAFT DEALERS  
Ind. Code 9-31

IND. CODE § 9-31-3-19 (Dealer numbers for demonstration or test motorboats);

- Boat dealers that apply for a certificate of number under this section are now issued only one (1) plate for each assigned certificate number.
- Additionally, the plate is no longer displayed on each side of the boat and must now be displayed within the boat while that vehicle is being tested or demonstrated.

IND. CODE § 9-31-4-5 (License Term and Fee);

- A license issued under this chapter is valid for one (1) year from the date the license was issued.
- A person that surrenders the license prior to the expiration date is no longer entitled to a refund under this section.

*If you have additional questions regarding the forgoing statutory changes, you may contact the Office of the Indiana Secretary of State, Dealer Services Division, by telephone at (317) 591-5303. You should also consult with private counsel as the Dealer Services Division is not authorized to provide legal advice.*

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<sup>2</sup> Disposal facilities, Automotive Salvage Rebuilders, and Used Parts Dealers are collectively referred to as "Salvage Dealers."